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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 170616568-7568-01]

RIN 0648-BG93

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Limits in Purse Seine Fisheries for 2017

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS seeks comments on this proposed rule issued under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act). The proposed rule would establish a limit for calendar year 2017 on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone (U.S. EEZ) and on the high seas between the latitudes of 20° N. and 20° S. in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). The limit is 1,828 fishing days. The rule also would make corrections to outdated cross references in existing regulatory text. This action is necessary to satisfy the obligations of the United States under the Convention, to which it is a Contracting Party.

DATES: Comments on the proposed rule must be submitted in writing by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on the proposed rule and the regulatory impact review (RIR) prepared for the proposed rule, identified by NOAA-NMFS-2017-0100, by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov*/#!/docketDetail;D= NOAA-NMFS-2017-0100,
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

- OR -

- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

An initial regulatory flexibility analysis (IRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the RIR and the programmatic environmental assessment (PEA) prepared for National Environmental Policy Act (NEPA) purposes are available at *www.regulations.gov* or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above).

FOR FURTHER INFORMATION CONTACT: Emily Crigler, NMFS PIRO, 808-725-5036.

SUPPLEMENTARY INFORMATION:

Background on the Convention

The Convention is concerned with the conservation and management of fisheries for highly migratory species (HMS). The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO. To accomplish this objective, the Convention established the Commission, which includes Members, Cooperating Non-members, and Participating Territories (collectively referred to here as “members”). The United States of America is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States implements, as appropriate, conservation and management measures and other decisions adopted by the Commission. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of

State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC Web site at: www.wcpfc.int/doc/convention-area-map.

Proposed Action

This proposed rule would implement specific provisions of the Commission's Conservation and Management Measure (CMM) 2016-01, "Conservation and Management Measure for Bigeye, Yellowfin, and Skipjack Tuna in the Western and Central Pacific Ocean," for purse seine fisheries. CMM 2016-01 was adopted by the Commission at its thirteenth regular annual session, in December 2016, went into effect February 2017, and is applicable for 2017. The rule would also make some administrative changes to correct cross references in existing regulatory text.

CMM 2016-01 is the latest in a series of CMMs devoted to the conservation and management of tropical tuna stocks, particularly stocks of bigeye tuna (*Thunnus obesus*),

yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*). CMM 2016-01 maintains the provisions of its predecessor, CMM 2015-01. These and the other CMMs are available at: www.wcpfc.int/conservation-and-management-measures.

The stated objective of CMM 2016-01 and several of its predecessor CMMs is to ensure that the stocks of bigeye tuna, yellowfin tuna, and skipjack tuna in the WCPO are, at a minimum, maintained at levels capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors. The CMM includes specific objectives for each of the three stocks: for each, the fishing mortality rate is to be reduced to or maintained at levels no greater than the fishing mortality rate associated with maximum sustainable yield. The proposed rule would implement the provisions for purse seine vessels that have not yet been implemented for 2017. Several provisions of CMM 2016-01 that are the same as in CMM 2015-01 have already been implemented by NMFS. NMFS is also adjusting the longline bigeye tuna catch limit as required under CMM 2016-01 through a separate rulemaking (82 FR 36341; August 4, 2017).

The elements of the proposed rule are detailed below. The administrative changes that would be made to correct outdated references in existing regulatory text are described at the end of this preamble.

Purse seine effort limits

As in previous rules to implement similar Commission-mandated limits on purse seine fishing effort, this proposed rule would implement the applicable limits for the U.S. EEZ (paragraph 23 of CMM 2016-01) and the high seas (paragraph 25 of CMM 2016-01) such that they apply to a single area, without regard to the boundary between the U.S. EEZ and the high seas. CMM 2016-01 has separate provisions for the high seas and the

EEZ merely because they are subject to different management responsibility, and not because of different conservation and management needs or objectives for the two areas. Specifically, CMM 2016-01 calls for fishing effort in EEZs to be limited by coastal States, and fishing effort in areas of high seas to be limited by flag States.

In this case, the United States is both a coastal state and a flag state and will satisfy its dual responsibilities by implementing a rule that combines the two areas for the purpose of limiting purse seine fishing effort. NMFS considered both the action alternative that would combine the two areas and another alternative that would not (see the PEA and the RIR for comparisons of the two alternatives). Because both alternatives would accomplish the objective of controlling fishing effort by the WPCFC-adopted amount (*i.e.*, by U.S. purse seine vessels operating on the high seas and by purse seine vessels in areas under U.S. jurisdiction, collectively), and because the alternative of combining the two areas is expected to result in greater operational flexibility to affected purse seine vessels and lesser adverse economic impacts, as in previous years, NMFS is proposing to implement the alternative that would combine the two areas. This combined area (within the Convention Area between the latitudes of 20° N. and 20° S.) is referred to in U.S. regulations as the Effort Limit Area for Purse Seine, or ELAPS (see 50 CFR 300.211).

The 2017 purse seine fishing effort limit for the ELAPS is formulated as in previous rules to establish limits for the ELAPS: the applicable limit for the U.S. EEZ portion of the ELAPS, 558 fishing days per year, is combined with the applicable limit for the high seas portion of the ELAPS, 1,270 fishing days per year, resulting in a combined limit of 1,828 fishing days in the ELAPS for calendar year 2017. This ELAPS

limit for 2017, 1,828 fishing days, is identical to the limits established for 2014, 2015, and 2016.

The meaning of “fishing day” is defined at 50 CFR 300.211; that is, any day in which a fishing vessel of the United States equipped with purse seine gear searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.

As established in existing regulations for purse seine fishing effort limits in the ELAPS, NMFS will monitor the number of fishing days spent in the ELAPS using data submitted in logbooks and other available information. If and when NMFS determines that the limit of 1,828 fishing days is expected to be reached by a specific future date, it will publish a notice in the *Federal Register* announcing that the purse seine fishery in the ELAPS will be closed starting on a specific future date and will remain closed until the end of calendar year 2017. NMFS will publish that notice at least seven days in advance of the closure date (see 50 CFR 300.223(a)(2)). Starting on the announced closure date, and for the remainder of calendar year 2017, it will be prohibited for U.S. purse seine vessels to fish in the ELAPS (see CFR 300.223(a)(3)).

Related Rulemaking

On May 12, 2015, as NMFS was preparing to publish an interim rule to establish the ELAPS limit for 2015 (published May 21, 2015; 80 FR 29220), NMFS received a petition for rulemaking from Tri Marine Management Company, LLC. The company requested, first, that NOAA undertake an emergency rulemaking to implement the 2015 ELAPS limits for fishing days on the high seas, and second, that NOAA issue a rule exempting from that high seas limit any U.S.-flagged purse seine vessel that, pursuant to

contract or declaration of intent, delivers or will deliver at least 50 percent of its catch to tuna processing facilities based in American Samoa.

On July 17, 2015, NMFS issued a notice of receipt of, and a request for comments on, the petition (80 FR 42464).

On October 23, 2015, after considering the petition and public comments on the petition, NMFS announced that it had denied the petition (80 FR 64382). The petition, the public comments on the petition, and NMFS' decision on the petition are available via the Federal e-Rulemaking Portal, at www.regulations.gov (search for Docket ID NOAA-NMFS-2015-0088).

Although NMFS denied the petition, it acknowledged that some of the issues raised in the petition warrant further examination. Accordingly, on the same date, October 23, 2015, and in the same *Federal Register* document, NMFS issued an advance notice of proposed rulemaking (ANPRM) related to the subject of the petition (80 FR 64382). NMFS continues to evaluate options that may mitigate adverse economic impacts of purse seine fishing restrictions on the U.S. territories, to the extent consistent with U.S. obligations under the Convention. Establishing a limit of 1,828 fishing days in the ELAPS for 2017 through this proposed rule, however, would not preclude NMFS from proposing at a later date such regulations for 2017 or subsequent years.

Administrative changes to existing regulations

The regulations at 50 CFR 300.217(b) and 300.218(a)(2)(v) contain outdated cross references that would be corrected by this proposed rule. In Section 300.217, paragraph (b)(1) would be revised to provide a cross reference to Section 300.336(b)(2), not Section 300.14(b), and in Section 300.218(a)(2)(v), the cross reference would be to Section

300.341(a) instead of to Sections 300.17(a) and (b). Sections 300.14(b) and Sections 300.17(a) and (b) no longer exist and have been replaced through a new regulatory action implementing provisions of the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*).

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this proposed rule is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

Coastal Zone Management Act (CZMA)

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the State of Hawaii. Determinations to Hawaii and each of the Territories were submitted on June 26, 2017, for review by the responsible state and territorial agencies under section 307 of the CZMA.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act (RFA)

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section of

the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. The analysis follows:

Estimated Number of Small Entities Affected

For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 114111) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The proposed rule would apply to owners and operators of U.S. purse seine vessels used for fishing for HMS in the Convention Area.

There would be no disproportionate economic impacts between small and large entities operating vessels resulting from this rule. Furthermore, there would be no disproportionate economic impacts based on vessel size, gear, or home port.

The proposed rule would apply to owners and operators of U.S. commercial fishing vessels that use purse seine gear to fish for HMS in the Convention Area. The estimated number of affected fishing vessels is 40 purse seine vessels (based on the maximum number of purse seine vessels licenses available under the South Pacific Tuna Treaty excluding joint-venture licenses, of which there are five available under the SPTT, but no joint-venture licenses have ever been applied for or issued).

Based on (limited) financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that over

half of the vessels in the purse seine fleet are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$11.0 million. Within the purse seine fleet, analysis of average revenue, by vessel, for the three years of 2014-2016 reveals that average fleet revenue was \$10,201,962; 22 participating vessels qualified as small entities with their average of the most recent three years of vessel revenue for which data is available of less than \$11 million.

Recordkeeping, Reporting, and Other Compliance Requirements

The reporting, recordkeeping and other compliance requirements of this proposed rule are described earlier in the preamble. The classes of small entities subject to the requirements and the types of professional skills necessary to fulfill the requirements are as follows:

The proposed action would establish fishing effort limits for purse seine vessels fishing in the U.S. EEZ and the high seas within the Convention Area between 20 N and 20 S: These requirements would not impose any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with the proposed requirements are described below to the extent possible:

If and when the purse seine fishery is closed to fishing in the ELAPS as a result of the annual fishing effort limit being reached in 2017, owners and operators of U.S. purse seine vessels would have to cease fishing in that area for the remainder of the calendar year. Closure of the fishery in the ELAPS could thereby cause foregone fishing

opportunities and associated economic losses if the ELAPS contains preferred fishing grounds during such a closure. The likelihood of the fishery being closed in the ELAPS in 2017 under the proposed rule (1,828 days) is greater than under the no-action alternative (no limit). Purse seine fishing was closed in the ELAPS in 2015 and 2016 after NMFS projected the fishing day limit would be reached in the ELAPS in those years. To determine the likelihood of the limit being reached in 2017, fishing effort in the ELAPS was considered for the most recent 10 years, but omitting 2010-2012, during which two important areas of high seas were closed to fishing. In order to make the data comparable among years, historical fishing effort as well as the proposed ELAPS limit are expressed here in terms of fishing days per year per active vessel, on average. The proposed limit is 1,828 days, and assuming 40 active vessels in 2017, this is equivalent to 45.7 fishing days per vessel per year on average (“proposed threshold”). Among the 10 years 2005-2009 and 2013-2016, fishing effort in the ELAPS ranged from 31 to 65 fishing days per year, exceeding the proposed threshold in 8 of the 10 years, or 80 percent of the time. Based on this history, the likelihood of the proposed limit being reached in 2017 is substantial—roughly 80 percent. However, current fishing patterns for 2017 as of June 2017 suggest that the rate of fishing in the ELAPS in 2017 (~220 days) is much lower than the historical average with average fishing days per vessel at 6.5 fishing days from January-June 2017. Assuming fishing conditions in the latter half of the year mimic the first half of 2017, NMFS believes that it is unlikely that the ELAPS limit would be reached in 2017. If fishing conditions in the latter half of the year were to increase to the highest rate observed in 2015 (21 fishing days/calendar day), there would be a high likelihood that the ELAPS limit would be reached prior to the end of 2017.

The highest rate observed to date in 2017 has been 8.5 fishing days/calendar day, and if the highest rate in 2017 were to occur through end of 2017, the ELAPS limit would be expected to be reached by December 22, 2017.

Other factors that could influence the likelihood of the proposed limit being reached are the status of vessels with respect to whether they have fishery endorsements and are allowed to fish in the U.S. EEZ, El Nino-Southern Oscillation (ENSO) conditions, and fishing day opportunities through the South Pacific Tuna Treaty and fishing day opportunities in the Eastern Pacific Ocean. Regarding the first factor, if the proportion of the fleet that has fishery endorsements changes from the proportion during the baseline period, the likelihood of the ELAPS limit being reached would change accordingly (if the proportion increases, the likelihood would increase). However, because fishing in the U.S. EEZ makes up a relatively small portion of all fishing in the ELAPS, this is a relatively minor factor, and is not examined any further here. Regarding the second factor, the eastern areas of the WCPO have tended to be comparatively more attractive to the U.S. purse seine fleet during El Nino events (versus other times), when warm surface water spreads from the western Pacific to the eastern Pacific and large, valuable yellowfin become more vulnerable to purse seine fishing. Consequently, the ELAPS, much of which is situated in the eastern range of the fleet's fishing grounds, is likely to be more important fishing grounds to the fleet during El Nino events (as compared to neutral or La Nina events). According to the National Weather Service ((see www.cpc.ncep.noaa.gov/products/analysis_monitoring/enso_advisory/index.shtml), as of June 2017, conditions were ENSO-neutral and the forecast was that ENSO-neutral

conditions are favored through the second half of 2017. The 35-50 percent chance of an El Nino developing in the fall of 2017 suggests a slight chance that fishing in the ELAPS could become more important in the latter half of the year, but would only slightly increase the likelihood (than indicated by fishing effort alone) of the proposed 2017 ELAPS limit being reached. Regarding the third factor, effective January 1, 2017, a new treaty is in place between U.S. purse seine vessel owners and the members of the Pacific Islands Forum Fisheries Agency (FFA) that allows the U.S. fleet the opportunity to purchase fishing days for use in the EEZs of the Parties to the Nauru Agreement (PNA, a subset of eight FFA members in whose waters most WCPO tropical purse seine fishing occurs), and in the EEZs of the other FFA members during the period of the arrangement, which is through 2022). Under the new treaty, vessels notify the U.S. government which in turn informs FFA of the number of treaty days each vessel or group of vessels desires to purchase. These days can be traded among vessels participating in the treaty, and vessels may purchase additional bilateral days during the agreement period if additional days are desired. As each vessel decides on the number of fishing days it wishes to purchase, and vessels can trade and purchase additional bilateral days, it appears that there is a relatively small likelihood of all of the EEZs of the FFA members becoming unavailable to the U.S. fleet before the end of 2017. It is possible that vessels that purchase more treaty days may rely less on the use of ELAPS days whereas vessels that purchase fewer treaty days may rely more heavily on the use of ELAPS days. Regarding the fourth factor, vessels may also choose to fish outside the Convention Area in the eastern Pacific Ocean (EPO). Historically, the fleet fished very little in the EPO, but the numbers of U.S. purse seine vessels fishing in the EPO has been steadily

increasing since 2014. Vessels fishing in the EPO are required to be on the IATTC Vessel Register, and can either apply to be on the active purse seine capacity list where they can fish in the EPO during the calendar year or request to use one fishing trip in the EPO that an SPTT-licensed vessel is allowed to make, not to exceed 90 days in length, and there is an annual limit of 32 trips for the entire SPTT-licensed fleet (50 CFR 300.22(b)(1)). If vessels choose to fish in the EPO, this could influence the number of ELAPS days they use, particularly if they opt to fish in the overlap area between the WCPFC and IATTC where their effort would count against the ELAPS limit or fish outside of the area of the overlap where their effort would not count against the ELAPS limit. As of June 2017, 17 U.S. purse seine vessels with WCPFC Area Endorsements are also on the IATTC active purse seine register for 2017.

In summary, based on the available information and particularly the current fishing patterns in 2017, there is a small likelihood that the proposed ELAPS limit would be reached before the end of 2017.

The costs associated with a closure of the ELAPS would depend greatly on the length of the closure as well as whether the EEZs of other nations, particularly the typically most favored fishing grounds, the EEZs of the PNA, or the Eastern Pacific were available for fishing. NMFS conducted a study on the economic impacts of the 2015 ELAPS closure, which lasted from June 15 – December 31, 2015, and found that the 2015 ELAPS closure had an adverse impact on profitability across the combined sectors of vessels, canneries and vessel support facilities in American Samoa. During the 2015 and 2016 ELAPS closures, the EEZs of the FFA members remained available for fishing as well as fishing in the Eastern Pacific. As indicated above, there is relatively small

likelihood of the EEZs of the FFA members being unavailable for fishing before the end of 2017. Assuming the EEZs of the FFA and Eastern Pacific remain available as fishing grounds, the impacts of a closure of the ELAPS would depend greatly on its length. The closure of any fishing grounds for any amount of time would be expected to bring impacts to affected entities (*e.g.*, because the open area might, during the closed period, be less optimal than the closed area, and vessels might use more fuel and spend more time having to travel to open areas). If the ELAPS is a relatively preferred fishing ground during the closure (*e.g.*, because of oceanic conditions or other factors), then the losses would be accordingly greater than if the ELAPS is not preferred relative to other fishing grounds. If the EEZs of the PNA and other FFA members are not available during an ELAPS closure, the costs of an ELAPS closure could be substantial. In the event the entire WCPO is closed to fishing during an ELAPS closure, possible next-best opportunities include fishing outside the Convention Area in the eastern Pacific Ocean (EPO), and not fishing. As discussed above, an increasing number of vessels have started fishing in the EPO, and almost half the fleet is on the IATTC active vessel register list. Vessels that are not on the IATTC active purse seine vessel register list can request to use the one trip option to fish in the EPO. The alternative of not fishing at all during an ELAPS closure would mean a loss of any revenues from fishing. However, many of the vessels' variable operating costs would be avoided in that case, and for some vessels the time might be used for productive activities like vessel and equipment maintenance. U.S. purse seine vessel operating costs are not known, so estimates of economic losses cannot be made. But information on revenues per day can give an indication of the magnitude of possible economic costs to affected entities. Average annual gross revenues for the 40

affected purse seine vessels during 2014–2016 were approximately \$10 million per vessel, on average. This equates to about \$28,000 per calendar day, on average.

The proposed 2017 ELAPS limit could affect the temporal distribution of fishing effort in the U.S. purse seine fishery. Since the limits would apply fleet-wide; that is, they would not be allocated to individual vessels, vessel operators might have an incentive to fish harder in the ELAPS earlier in a given year than they otherwise would. Such a “race-to-fish” effect might also be expected in the time period between when a closure of the fishery is announced and when it is actually closed, which would be at least seven calendar days. To the extent such temporal shifts occur, they could affect the seasonal timing of fish catches and deliveries to canneries, and conceivably affect prices.

However, because most of the traditional fishing grounds are outside the ELAPS, the intensity of any race-to-fish in the ELAPS is likely to be low if it occurs at all. The small likelihood of the EEZs of the FFA being closed to fishing before the end of 2017, as discussed above, might also influence the behavior of fishermen earlier in the year, but it is not clear how it would influence fishing in the ELAPS. If fishermen are more concerned about the FFA members’ EEZs closing at some point, they might fish harder in those waters earlier in the year; if, on the other hand, they are more concerned about the ELAPS closing, they might fish harder in the ELAPS earlier in the year. In any case, the timing of cannery deliveries by the U.S. fleet alone (as it might be affected by a race to fish in the ELAPS) is unlikely to have an appreciable impact on prices, since many canneries buy from the fleets of multiple nations at any given time. A race to fish could bring costs to affected entities if it causes vessel operators to forego vessel maintenance in favor of fishing or to fish in weather or ocean conditions that they otherwise would

not. This could bring costs in terms of the health and safety of the crew as well as the economic performance of the vessel.

In summary, there is a small likelihood that the ELAPS limit will be reached before the end of 2017, and if it is reached before the end of 2017, the impacts to affected entities could be minor or substantial, depending on such factors as the length of the closure, whether the EEZs of the FFA members and Eastern Pacific remain available for fishing, and oceanic conditions.

There would be no disproportionate economic impacts between small and large entities operating vessels as a result of this proposed rule. Furthermore, there would be no disproportionate economic impacts based on vessel size, gear, or home-port.

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that duplicate, overlap with, or conflict with the proposed regulations.

Alternatives to the Proposed Rule

NMFS has not been able to identify any alternatives that would accomplish the objectives of the Act and minimize any significant economic impact of the proposed rule on small entities. The alternative of taking no action at all was rejected because it would fail to accomplish the objectives of the Act. As a Contracting Party to the Convention, the United States is required to implement the decisions of WCPFC. Consequently, NMFS has limited discretion as to how to implement those decisions.

In previous rulemakings to establish or revise U.S. purse seine fishing effort limits in the ELAPS in accordance with WCPFC decisions, NMFS considered a number of alternatives. The alternatives had to do, firstly, with the time scales for the limits (*e.g.*,

single-year versus multiple-year limits); secondly, with whether separate limits would be established in the U.S. EEZ and high seas portions of the ELAPS or they would be combined; thirdly, with whether the limit(s) would be allocated to individual vessels; and fourthly, with the magnitude of the limit(s).

The first category, time scales, is not relevant here because the objective is to implement the required fishing effort limit for 2017 only. The second category, whether to break up the ELAPS limit into separate limits for the U.S. EEZ and the high seas portions of the ELAPS, would provide less operational flexibility for affected purse seine vessels, and thus be more constraining and costly than the proposed limit. It is not preferred for that reason. The third category, allocating the limit among individual vessels, would likely alleviate any adverse impacts of a race-to-fish that might occur as a result of establishing the competitive fishing effort limits as in the proposed rule. As described in the previous paragraphs, those potential impacts include lower prices for landed product and risks to performance and safety stemming from fishing during sub-optimal times. Those impacts, however, are expected to be minor, so this alternative is not preferred.

Regarding the fourth category, the magnitude of the limits, NMFS could, as it did for the 2013 rule that established the 2013 and existing 2014 ELAPS limit, consider both smaller and larger limits for the ELAPS. Smaller limits, being more constraining and costly to affected fishing businesses, are not considered further here. CMM 2013–01 includes an explicit limit for the United States for the high seas, 1,270 fishing days per year, so NMFS is not afforded any discretion there. Like its predecessor, CMM 2012–01, CMM 2013–01 is less explicit with respect to the U.S. EEZ, so NMFS could consider a

more expansive limit for that aspect of the total ELAPS limit. For example, in the 2013 rule, NMFS considered an alternative that would be based in part on the fleet's greatest annual level of fishing effort in the U.S. EEZ (on an average per-vessel basis, then expanded to a 40-vessel equivalent) during the 1997–2010 time period. Using that approach here, the U.S. EEZ aspect of the limit would be 1,655 fishing days, and when combined with the high seas aspect of 1,270 fishing days, the total ELAPS limit would be 2,925 fishing days. Because this alternative limit is greater and thus less constraining than the proposed limit of 1,828 fishing days, the costs of complying with this alternative would be less than or equal to those of the proposed limit. This alternative is not preferred because it would depart from the effort limits established for the period 2009–2016. The approach used in formulating the limit proposed in this rule is consistent with the precedent set by the 2009 rule and the 2013 rule, and affected entities have been exposed to the impacts of those limits for the past five years. The alternative of taking no action at all, which would not set any fishing day limits, is not preferred because it would fail to accomplish the objective of the WCPFC Implementation Act or satisfy the international obligations of the United States as a Contracting Party to the Convention.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: September 14, 2017.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

2. In § 300.217, revise paragraph (b)(1) to read as follows:

§ 300.217 Vessel identification.

* * * * *

(b) *Marking.* (1) Vessels shall be marked in accordance with the identification requirements of § 300.336(b)(2), and if an IRCS has not been assigned to the vessel, then the Federal, State, or other documentation number used in lieu of the IRCS must be preceded by the characters “USA” and a hyphen (that is, “USA-“).

3. In § 300.218, revise paragraph (a)(2)(v) to read as follows:

§ 300.218 Reporting and recordkeeping requirements.

* * * * *

(v) *High seas fisheries*. Fishing activities subject to the reporting requirements of § 300.341 must be maintained and reported in the manner specified in § 300.341(a).

4. In § 300.223, revise paragraph (a)(1) to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(a) * * *

(1) For calendar year 2017 there is a limit of 1,828 fishing days.

[FR Doc. 2017-19981 Filed: 9/19/2017 8:45 am; Publication Date: 9/20/2017]